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EXAMINER
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BELIVEAU, SCOTT E

ART UNIT	PAPER NUMBER
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2614

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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/022,655

Applicant(s)

D'SOUZA ET AL.

Examiner

Scott Beliveau

Art Unit

2614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 3-21 and 24-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3-21 and 24-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments with respect to claims 3-21 and 24-35 have been considered but are moot in view of the new ground(s) of rejection. In rewriting claim 5 into independent form so as to include all of the limitations of the base independent claim and the intervening claim, the applicant further added an additional limitation to removing step of previously presented claim 5 that was not previously considered. Accordingly, applicant's amendment has necessitated a new ground of rejection presented in this Office action.
2. The OFFICIAL NOTICE stating that it is notoriously well known in the art for a service provider to periodically distribute software to set top terminal units in order to update operating parameters was not traversed and is accordingly taken as an admission of fact.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 3-5, 9, 10, 18-20 rejected under 35 U.S.C. 102(b) as being anticipated by Bedard (US Pat No. 5,801,747).

In consideration of claims 5, and 18-20, the Bedard embodiment discloses a method implemented via a system with corresponding hardware based “means” such as a set-top unit (Col 3, Lines 4-15) and/or “favorite selection software” software or computer readable media

Art Unit: 2614

comprising program code (Col 3, Lines 56-62) for “automatically flagging one or more tunable channels broadcast over a distribution network as a favorite channel” (Col 2, Lines 6-12) wherein the “channel list and view count data structure comprising a listing of the channels viewed by a user and the number of times each channel has been tuned” [200] or “list of automatic favorite channels” [200] is associated in memory with an “identifier and indicator for each channel” (Figure 2). As illustrated in Figure 3, the embodiment is operable to “monitor commands input by the user” from an “input device” such as a remote control (Col 3, Lines 26-32) including “command from the user to tune a channel” [302]. The embodiment subsequently “records an identifier for the channel” [312] and may “increment a channel tune count indicator for the channel” [308]. Furthermore, the embodiment is operable to “decrement a channel tune count indicator for the channel according to prescribed criteria” and to further “remove from the list of automatic favorite channels any identifier whose associated channel tune count indicator falls below a view threshold value” of zero viewings [320]. This information is subsequently utilized to “select identifiers with the top indicators” for inclusion within the “list of automatic favorite channels” (Col 7, Lines 39-64).

Claim 3 is rejected wherein the embodiment “records the amount of time that the channel was viewed” (Col 4, Lines 7-14, 49-65) and “selects identifiers with the top indicators and view times for inclusion within the list of automatic favorite channels” (Col 6, Lines 28-46).

In consideration of claim 4, the reference discloses that the embodiment is operable to create the list of favorites [200] based on “comparing the channel tune count indicator associated with a particular identifier with channel tune count indicators in the list of

Art Unit: 2614

automatic favorite channels” in order to “determine if the indicator is greater than any indicator comprising the list”. The embodiment subsequently “adds the particular identifier and the associated indicator to the list” if it is “greater than any other channel tune count indicator comprising the list” (Col 6, Lines 47-62).

Claim 9 is rejected wherein the Bedard reference discloses a method for determining favorite channels that is operable to “compare a duration that the channel is viewed for against a time threshold” such as 15 minutes wherein the identifier is only “recorded” if the “viewed for a duration greater than the time threshold” (Col 3, Line 63 – Col 4, Line 14).

Claim 10 is rejected wherein the embodiment is operable to “receive indication of a selection of a favorite control on the input device to traverse the list of automatic favorite channels” (Col 3, Lines 39-44; Col 7, Lines 39-64).

Claims 26, 28, 30, 32, and 34 are rejected wherein the embodiment further “decrements the associated channel tune count indicator for any identifier in the list of automatic favorite channels when the channel tune count indicator for a channel associated with the any identifier is not incremented within a predetermined period” (Figure 3). For example, if a viewer watches a particular program for a “predetermined period” (ex. 15 minutes) and there is no room in list to add entry of a newly watched channel, then the “tune count indicator” starting with the least recently watched program is decremented [316].

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 2614

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).
7. Claim 27, 29, 21, 33, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bedard (US Pat No. 5,801,747).

In consideration of claims 27, 29, 21, 33, and 35, the Bedard reference does not explicitly disclose that the "predetermined period is one 24-hour period" (Col 4, Lines 7-12). It would have been an obvious matter of design choice to use a "predetermined period" of "one 24-hour period", since application has not disclosed that the particular duration of the period solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with a shorter "predetermined period" such as 15 minutes for the purpose of aging entries such that the embodiment reflects the viewer's current favorite channels (Col 5, Lines 16-23).

8. Claim 3-8, 18-21, 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Candelore et al. (US Pub No. 2002/0104081).

In consideration of claims 5, 18, and 19, the Candelore et al. embodiment discloses a method implemented via a system with corresponding hardware based “means” and/or software or computer readable media comprising program code (Page 4, Para. 41) for “automatically flagging one or more tunable channels broadcast over a distribution network as a favorite channel” (Page 1, Para. 18) wherein the “list of automatic favorite channels” is associated in memory with both the “identifier” as well as the “indicator” (Page 3, Para. 32). As illustrated in Figure 5, the embodiment is operable to “monitor commands input by the user” from an “input device” [5] including “command from the user to tune a channel” [402]. The embodiment subsequently “records an identifier for the channel” [406] and may “increment a channel tune count indicator for the channel” (Table 5; Page 3, Para 30; Page 5, Paras. 48-51). This information is subsequently utilized to “select identifiers with the top indicators” for inclusion within the “list of automatic favorite channels” (Page 4, Para. 47) displayed to the user.

With respect to the amended “removing” step, the reference teaches that the particular list may comprise a list of the top 15 channels which have the highest count value in the stat table (Page 4, Para 38). For example, the reference discloses that the embodiment may start with the first 10 channels and sort them by time wherein the channel with the lowest amount of time is replaced with the with new ones that it finds with more time using statistics stored in the stat tables [406] (Page 4, Para 47). Accordingly, it would have obvious to perform a similar operation so as to “remove from the list of automatic favorite channels any identifier whose associated channel tune count indicator falls below a view threshold value” such that the “view threshold value” is defined as the “channel tune count” associated with the 11<sup>th</sup> or

16<sup>th</sup> channel for the purpose of for the purpose of enabling the list of favorites to change accordingly to viewing habits when creating a top 10 or 15 channel list based on the number of times a channel has been accessed (Page 3, Para. 30).

Claim 3 is rejected wherein the embodiment may “record the amount of time that the channel was viewed” (Tables 1-3) and use this information to “select identifiers with the top indicators and view times for inclusion within the list of automatic favorite channels” (Page 3, Para. 30; Page 4, Para. 45).

In consideration of claim 4, the reference discloses that the embodiment is operable to create the list of favorites [408] based on “comparing the channel tune count indicator associated with a particular identifier with channel tune count indicators in the list of automatic favorite channels” in order to “determine if the indicator is greater than any indicator comprising the list”. The embodiment subsequently “adds the particular identifier and the associated indicator to the list” if it is “greater than any other channel tune count indicator comprising the list” (Page 4, Para. 47).

Claim 6 is rejected wherein the “step of selecting” further includes determining whether the “channel tune count indicator associated with a channel exceeds the view threshold value” wherein the “view threshold value being related substantially to an Nth highest channel tune count indicator” (Page 4, Para. 38).

In consideration of claim 7, the reference discloses that the embodiment is operable to enable the user to establish user settings/preferences for the system (Page 2, Para. 27). The reference further suggests that the embodiment provides flexibility with respect to the user being operable to change the criteria upon which the favorite channels are based (Page 3,



Para. 30). The reference, however, does not explicitly disclose nor preclude that the viewer may further related substantially to a “user defined value” such that the user may determine to only view the top 10 or top 15 channels referenced in conjunction with various examples disclosed the embodiment. Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made, to modify the invention if necessary, so as to provide the user with the ability to define the particular number of favorite channels (ex. 10 or 15) to display for the purpose of providing the user with the added flexibility to established their preferences for the particular number of favorite channels to be displayed. For example, if a system only comprises 10 channels, the particular display of all 10 channels as “favorites” would not be particularly useful.

In consideration of claim 8, the Candelore et al. reference does not explicitly disclose or preclude that the aforementioned “view threshold value” is a “value set dynamically by a content service provider”. It would have been an obvious matter of design choice to enable the embodiment to set the “value” dynamically by a content service provider, since application has not disclosed that the particular dynamic setting of the value by a remote content service provider solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with the particular value being set by the user.

Alternatively, as taken as an admission of fact, it is notoriously well known in the art for a service provider to periodically distribute software to set top terminal units in order to update operating parameters. Accordingly, it would have been obvious to one having ordinary skill in the art to modify the Candelore et al. embodiment, if necessary, to facilitate

Art Unit: 2614

the updating of set top terminal software for the purpose of advantageously allowing the “content service provider” with the ability to customize and update the user’s interface remotely. Furthermore, in conjunction with the remote updating process of the user interface, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further enable the updating of a “value” that determines the number of favorite channels to be displayed for the purpose of customizing the user interface menu format to display a particular number of favorite channels remotely.

Claim 20 is rejected wherein the aforementioned system [400] comprises a “channel list and view count data structure comprising a listing of channels viewed by a user and the number of times each channel has been tuned” [406]. The embodiment further comprises “favorite selection software” (Table 5; Page 3, Para 30; Page 4, Para 41; Page 5, Paras. 48-51) to “record an identifier for a channel”, to “increment and decrement a channel tune count indicator for the channel according to prescribed criteria” (Page 5, Paras. 48-51), and to further “select recorded identifiers with the top indicators for inclusion within a list of automatic favorite channels” [408] (Page 4, Paras. 44-47). With respect to the amended “removing” step, the reference teaches that the particular list may comprise a list of the top 15 channels which have the highest count value in the stat table (Page 4, Para 38). For example, the reference discloses that the embodiment may start with the first 10 channels and sort them by time wherein the channel with the lowest amount of time is replaced with the with new ones that it finds with more time using statistics stored in the stat tables [406] (Page 4, Para 47). Accordingly, it would have obvious to perform a similar operation so as to “remove from the list of automatic favorite channels any identifier whose associated channel

Art Unit: 2614

tune count indicator falls below a view threshold value” such that the “view threshold value” is defined as the “channel tune count” associated with the 11<sup>th</sup> or 16<sup>th</sup> channel for the purpose of for the purpose of enabling the list of favorites to change accordingly to viewing habits when creating a top 10 or 15 channel list based on the number of times a channel has been accessed (Page 3, Para. 30).

Claim 21 is rejected wherein the “data structure and software” are stored on a “memory” [404] of a set top terminal [2] connected to the “distribution network” [3].

In consideration of claim 26, the Candelore reference is operable to “decrement the associated channel tune count indicator for any identifier in the list of automatic favorite channels when the channel tune count indicator for a channel associated with the any identifier is not incremented within a predetermined period” (Page 5, Paras. 48-51). The embodiment suggests as is further well known in the art, that viewers to watch a single channel for a “predetermined period” (Page 4, Para. 45). For example, as illustrated in conjunction with Figure 7, assuming that a viewer watches a single program for a 30-minute interval or “predetermined period”, the embodiment records a channel count associated that particular item. If resulting channel count (ex. Item A) resulting from the watching of that channel exceeds the maximum count number, then the channel count associated with an identifier (ex. Items B and C) that is not incremented within the aforementioned predetermined period is decremented. Alternatively, the limitation may be met wherein a viewer does not watch television for a “predetermined period” and then subsequently watches a particular channel triggering the rollover.

Art Unit: 2614

In consideration of claim 27, the Candelore reference discloses that that the “predetermined period” may be “one 24-hour period” corresponding to 1 day as set forth in Tables 1-4. Alternatively, it would have been an obvious matter of design choice to use a “predetermined period” of “one 24-hour period”, since application has not disclosed that the particular duration of the period solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with a shorter or longer “predetermined period”.

9. Claims 9-14, and 28-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Candelore et al. (US Pub No. 2002/0104081) in view of Ohkura et al. (US Pat No. 5,737,029).

In consideration of claim 9, it is unclear if the Candelore et al. embodiment further utilizes a means such that channels are only recorded if viewed for a minimum duration. The reference suggests the usage of a minimum time interval, however, it does not explicitly tie that with the recording of an identifier. The Ohkura et al. reference discloses a method for determining favorite channels that is operable to “compare a duration that the channel is viewed for against a time threshold” such as 5 minutes wherein the identifier is only “recorded” if the “viewed for a duration greater than the time threshold” (Col 8, Lines 22-27). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the Candelore et al. embodiment, if necessary, so as to only “increment the associated channel tune count indicator” based on a time threshold as disclosed by Ohkura et al. for the purpose of advantageously to avoid the counting of

broadcasting channels that are received for a short duration (Ohkura et al.: Col 8, Lines 22-27).

In consideration of claim 10, the Candelore et al. reference discloses that the embodiment is operable to “receive indication of a selection of a favorite control on the input device” (Figure 3) so as to activate the list of favorite channels. Furthermore, the reference discloses that the embodiment utilizes the input device [5] direction keys so as to traverse an EPG (Page 3, Para. 29). The reference, however, does not explicitly disclose that the user may utilize the aforementioned to “traverse the list of automatic channels”. The commonly assigned Ohkura et al. reference discloses an EPG wherein the embodiment may “receive indication of a selection” of a “favorite control” [160] on the “input device” [50] in order to “traverse the list of automatic favorite channels” (Col 11, Lines 19-28). Accordingly, it would have been obvious to one having ordinary skill in the art at the time of the invention was made to modify the Candelore et al. reference, if necessary, to utilize the channel selection techniques of Ohkura et al. for the purpose of improving the operability of channel selection so that the user can choose an intended broadcasting channel swiftly (Col 1, Lines 46 – Col 2, Line 40).

Claim 11 is rejected wherein the “list of automatic favorite channels” (Figures 16-21) may be “traversed one channel for each time the favorite control is selected” (Figure 15; Col 10, Lines 24-46)

Claim 12 is rejected wherein the “list of automatic favorite channels” may be “traversed . . . in order according to a rank of the channels in the list of automatic favorites” using the up-down “favorite control” [160].

In consideration of claim 13, the Candelore et al. reference discloses that the embodiment is operable to “display an electronic program guide” and to further “retrieve the list of automatic favorite channels” in conjunction with the guide (Page 2, Para. 20). The reference, however, does not explicitly disclose nor preclude the particular composition of the guide such that the “scope of information presented by the electronic program guide” is limited to programming available on channels comprising the list of automatic favorite channels”. As illustrated in Figures 16-21 of the Ohkura et al. embodiment may “display an electronic program guide” that is “limited” to “programming available on channels” of the “retrieved . . . list of the automatic favorite channels.” Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the Candelore et al. EPG so as to “limit” the guide display to programming associated with the list of automatic favorite channels as illustrated in Ohkura et al. for the purpose of improving the operability of channel selection so that the user can choose an intended broadcasting channel swiftly given that only programming associated with the favorite channels is displayed (Ohkura et al.: Col 1, Lines 46 – Col 2, Line 40).

Claim 14 is rejected wherein the embodiment is operable to “receive” and “extract programming information” or “guide data” for “presentation within the electronic programming guide” (Ohkura et al.: Col 5, Lines 9-19; Col 8, Lines 4-6).

In consideration of claims 28, 30, and 32, the Candelore reference is operable to “decrement the associated channel tune count indicator for any identifier in the list of automatic favorite channels when the channel tune count indicator for a channel associated with the any identifier is not incremented within a predetermined period” (Page 5, Paras. 48-

51). The embodiment suggests as is further well known in the art, that viewers to watch a single channel for a “predetermined period” (Page 4, Para. 45). For example, as illustrated in conjunction with Figure 7, assuming that a viewer watches a single program for a 30-minute interval or “predetermined period”, the embodiment records a channel count associated that particular item. If resulting channel count (ex. Item A) resulting from the watching of that channel exceeds the maximum count number, then the channel count associated with an identifier (ex. Items B and C) that is not incremented within the aforementioned predetermined period is decremented. Alternatively, the limitation may be met wherein a viewer does not watch television for a “predetermined period” and then subsequently watches a particular channel triggering the rollover.

In consideration of claims 29, 31, and 33, the Candelore reference discloses that that the “predetermined period” may be “one 24-hour period” corresponding to 1 day as set forth in Tables 1-4. Alternatively, it would have been an obvious matter of design choice to use a “predetermined period” of “one 24-hour period”, since application has not disclosed that the particular duration of the period solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with a shorter or longer “predetermined period”.

10. Claims 13, 15, 16, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Candelore et al. (US Pub No. 2002/0104081), in view of Noguchi et al. (US Pat No. 6,034,677).

In consideration of claim 13, the Candelore et al. reference discloses that the embodiment is operable to “display an electronic program guide” [4A] and to further “retrieve the list of

automatic favorite channels” (Page 2, Para. 20). The reference, however, does not explicitly disclose nor preclude that the composition or nature of the EPG. Furthermore, the reference does not explicitly disclose that the information is necessarily “limited” in scope to “presenting the programming available on channels comprising the list of automatic channels”.

The Noguchi et al. discloses a method and apparatus for displaying programming information in the form of an “electronic program guide” (Figure 13). Among its other features, the reference discloses that the guide may facilitate the user in designating certain programs as favorite programs. The reference, however, does not explicitly disclose nor preclude that this designation is a manual or automatic process or does it provide details pertaining to implementation of such an automated process. Accordingly, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the Noguchi et al. favorite channel designation method to utilize the automatic flagging favorite channel teachings of Candelore et al. for the purpose of presenting the viewer with a selection of favorites based on a number of criteria without having to program manually the list of favorites (Candelore et al.: Page 1, Para. 18). Furthermore, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the Noguchi et al. reference to include a “Favorites” category for the purpose of facilitating the finding and selection of programming associated with favorite channels (Candelore et al. Page 1, Para. 3).



Art Unit: 2614

In consideration of claim 15, as illustrated in Figure 13, the program guide comprises a “full screen program guide comprising listings of programs available on the distribution network” (Noguchi et al.: Col 9, Lines 6-18).

Claim 16 is rejected wherein as illustrated in Figures 10-13, the full screen program guide [1301] comprises “audio and video associated with the channel viewed before the guide is displayed” (Noguchi et al.: Col 8, Line 25 – Col 9, Line 8).

Claim 25 is rejected wherein the embodiment “includes the step of causing an icon to be displayed when a channel being viewed is on the list of automatic favorite channels” [2314] (Noguchi et al.: Figure 23; Col 15, Lines 5-9).

11. Claims 17, 34, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Candelore et al. (US Pub No. 2002/0104081) in view of McClard (US Pat No. 6,438,752).

In consideration of claim 17, the reference discloses a scenario wherein the embodiment is operable to “determine a time of day and a day of the week” and “based upon the day and time” select the “identifier” with the top indicator (Page 5, Para. 55). The embodiment is operable to “select identifiers with the top indicators for inclusion within a list of automatic favorite channels” based on one or more items according to user preferences (Page 2, Para. 28; Page 3, Para. 30). Accordingly, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the embodiment, if necessary, to provide an automatic list [408] using two or more identifiers such as “time of day and a day of the week” for the purpose of advantageously assisting the user in selecting favorite programming options that are relevant to current time period. For example, while it might be interesting to

Art Unit: 2614

learn that "Green Acres" is a favorite program, the information is not particularly helpful/useful if the program is not currently being aired.

Assuming arguendo, the McClard reference explicitly discloses a method to "select identifiers with the top indicators for inclusion within a time specific list of automatic favorite channels" (Col 6, 6, Lines 16-61). Accordingly, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the Candelore et al. reference, if necessary, so as to generate a "time specific list of automatic favorite channels" as taught by McClard for the purpose of providing a system which allows each individual user to quickly and easily browse through programs of particular interest regardless of the time of day or week (McClard: Col 2, Lines 4-7).

In consideration of claim 34, the Candelore reference is operable to "decrement the associated channel tune count indicator for any identifier in the list of automatic favorite channels when the channel tune count indicator for a channel associated with the any identifier is not incremented within a predetermined period" (Page 5, Paras. 48-51). The embodiment suggests as is further well known in the art, that viewers to watch a single channel for a "predetermined period" (Page 4, Para. 45). For example, as illustrated in conjunction with Figure 7, assuming that a viewer watches a single program for a 30-minute interval or "predetermined period", the embodiment records a channel count associated that particular item. If resulting channel count (ex. Item A) resulting from the watching of that channel exceeds the maximum count number, then the channel count associated with an identifier (ex. Items B and C) that is not incremented within the aforementioned predetermined period is decremented. Alternatively, the limitation may be met wherein a

Art Unit: 2614

viewer does not watch television for a “predetermined period” and then subsequently watches a particular channel triggering the rollover.

In consideration of claim 35, the Candelore reference discloses that the “predetermined period” may be “one 24-hour period” corresponding to 1 day as set forth in Tables 1-4. Alternatively, it would have been an obvious matter of design choice to use a “predetermined period” of “one 24-hour period”, since application has not disclosed that the particular duration of the period solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with a shorter or longer “predetermined period”.

12. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Candelore et al. (US Pub No. 2002/0104081) in view of Florence (US Pub No. 2002/0188948).

In consideration of claim 24, the Candelore et al. reference does not explicitly illustrate that the stat tables [406] further comprise “information conveying the particular channel and a service carried on that channel”. The reference however, suggests that the stat tables [406] store statistics comprising any other item type in determining a list of favorites (Page 3, Para. 33). The Florence reference discloses the storing of an “identifier for a particular channel” that comprises “information conveying the particular channel and a service carried on that channel” such as a channel number and associated provider associated with that channel for use in determining a list of favorite channels (Figure 4B). Accordingly, it would have been obvious to one having ordinary skill in the art to modify the stat tables [406] to further comprise any other type of information in determining a list of favorite channels including information “conveying the particular channel and a service carried on that channel” as

Art Unit: 2614

illustrated in Florence for the purpose of utilizing any other item type available in determining a list of favorites.

### *Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure as follows. Applicant is reminded that in amending in response to a rejection of claims, the patentable novelty must be clearly shown in view of the state of the art disclosed by the references cited and the objections made.

- The Yoshinobu (US Pat No. 5,734,444) reference discloses a broadcast receiving apparatus that removes channels designated as favorites “whose associated channel tune count indicator falls below a view threshold value” (Col 12, Line 6-34).
- The Hendricks et al. (US Pat No. 5,798,785) reference discloses a reprogrammable set top terminal that is operable to store and to identify favorite channels.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to

Art Unit: 2614

37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Beliveau whose telephone number is 703-305-4907.

The examiner can normally be reached on Monday-Friday from 9:00 a.m. - 6:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Miller can be reached on 703-305-4795. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SEB  
April 3, 2004

  
JOHN MILLER  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600